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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

AUG 14 2000

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| In the Matter of |) | |
| |) | |
| Toll Free Access Code |) | CC Docket No. <u>95-155</u> / |
| |) | |
| Database Service Management, Inc. |) | NSD File Nos. L-99-87 |
| And Beehive Telephone Company, Inc. |) | and L-99-88 |
| Petitions for Declaratory Rulings |) | |

To: The Commission

DSMI'S OPPOSITION TO RECONSIDERATION PETITIONS

Database Service Management, Inc. (DSMI) opposes the Petitions for Reconsideration filed by Beehive Telephone Company, Inc. (hereinafter Beehive) and WorldCom Inc., (hereinafter WorldCom) in the above-captioned matter. Neither Beehive nor WorldCom raises concerns sufficient to warrant the Commission's reconsideration of its finding that DSMI is an impartial administrator of the toll free service system. The Petitions should be denied. As shown below, DSMI is an impartial administrator of the toll free service system and the FCC's directive in its Fifth Report and Order¹ seeking a recommendation from the North American Numbering Council (NANC) regarding the future governance structure of the SMS/800 toll free system should be obtained before the Commission takes further action in this matter.

I. The Commission Properly Applied the Relevant Neutrality Criteria

The Commission properly applied the neutrality criteria set forth in its Rule 52.12, 47 C.F.R. 52.12. Neither Beehive nor WorldCom successfully challenge the Commission's ruling

¹ In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, Fifth Report and Order (rel. July 5, 2000).

on the first criterion that DSMI is not an affiliate of any telecommunications service providers. As the Commission found, contrary to WorldCom's misstatements, many significant changes have occurred since 1993 in the structure of toll free administration. In November 1997, Bellcore, then a wholly owned subsidiary of the RBOCs, was sold to Science Applications International Corporation, (SAIC). DSMI is now a wholly owned subsidiary of Telcordia Technologies, which is a wholly owned subsidiary of SAIC, an employee-owned company and not aligned with any segment of the telecommunications industry. SAIC and Telcordia have literally hundreds of customers in many different countries worldwide. SAIC and Telcordia have an extensive product line supporting all segments of the telecommunications industry. Moreover, WorldCom's assertion that DSMI is "the creature of a small set of companies..." is absurd. DSMI, as a subsidiary of Telcordia, is an independent company that has worked hand in hand with the FCC and the toll free industry over the last seven years to assure that all Responsible Organizations (Resp Orgs) who use the SMS/800 are treated fairly and equitably, and have the capabilities and functionality they require to support their end user customers.

Further, Beehive's argument that the RBOCs, through the SMS/800 Management Team (SMT), control DSMI, thus DSMI is their affiliate, is also nonsense. The fact that the SMT supervises DSMI's contract activities to ensure that DSMI is honoring the terms and conditions of its management contract with the SMT, a fact which Beehive belabors in its filing, is merely illustrative of the SMT's contract oversight. Nothing in Beehive's pleading demonstrates otherwise. Absent such oversight, the SMT would have no way of knowing whether DSMI was properly supporting their tariff and contractual obligations.

The FCC concluded that DSMI did not meet the second neutrality criterion in that it derived a majority of its revenues from a telecommunications provider, the BOCs. The fact that DSMI derives the majority of its revenues from the BOCs is an outgrowth of history, but is not a conclusive indicator of partiality. DSMI was established by Telcordia, when Telcordia was jointly owned by the BOCs, as a separate legal entity to assure that all the SMS/800 revenues were segregated, and to enable the BOCs to discretely record the revenues from the toll free service on DSMI's books of account. This arrangement was also put into place to facilitate FCC audit, oversight and review of this operation, separate and apart from other Telcordia activities. A more accurate analysis of whether DSMI meets the second neutrality criterion would have been for the FCC to review the total revenues of SAIC/Telcordia/DSMI. Even a review of the combined revenues of just Telcordia and DSMI would reveal that the majority of those revenues are not derived from a single telecommunications provider.

Regardless of the revenue test benchmark, the FCC nonetheless concluded that DSMI is not subject to undue influence by the BOCs because “ the terms in the SMS/800 Tariff require the impartial administration of toll free numbers. Thus, the terms of the SMS/800 tariff also preclude the BOCs from exercising undue influence over DSMI which, in any event, exercises no discretion in the administration of toll free numbers.”² The Commission's conclusion and supporting analysis were absolutely accurate.

As the Commission knows, what is generally referred to as “system administration”, actually has three levels of administration:

² Id. At para. 25.

- 1) the industry bodies of the SNAC and the INC, with oversight from the FCC, actually administer the toll free service access codes, policies and procedures, and the Responsible Organizations (Resp Orgs) administer their own selection of the toll free numbers, through access to the database;
- 2) The SMT, as owners and tariff holders of the service, manage the SMS/800 system including Resp Org access to their system via their tariff, and select and manage the underlying vendors; and
- 3) DSMI, as the SMT's business manager, performs the day-to-day system administration, making certain that the database, software, and help desk are operating in a manner that is satisfactory to the Resp Orgs and consistent with the terms and conditions of the tariff.

The system is fully automated, and DSMI itself has no direct access to the database, nor does it actually "administer" any numbers.

Both Beehive and WorldCom challenge the FCC's conclusions that the tariff vehicle preserves the impartial administration of the service. Beehive, for its part, asserts, as if a newly discovered fact, that since the BOCs jointly file the SMS/800 tariff, and DSMI is their business agent implementing the tariff, that means that the BOCs and DSMI are *joint administrators* of the service in violation of Section 251(e) of the statute. WorldCom argues that aggrieved parties must challenge the tariff through complaints, which take years to resolve, and that the BOCs are able to establish the tariff provisions in a manner that can make enforcement of the tariff of little value. WorldCom claims that since the BOCs have consistently refused to include performance

guarantees in the SMS/800 Tariff, there is virtually nothing left to enforce. Reduced to their essence, Beehive's and WorldCom's arguments actually address the issue of the ownership and operation of SMS/800 system by the BOCs in light of the Telecom Act of 1996, not whether DSMI is impartial in its day-to-day administration of the system.

The FCC has already surfaced this issue and has asked the NANC to make a recommendation with regard to the overall governance structure of the toll free system and the propriety of the BOCs' role. The Commission specifically asked the NANC to consider "whether the ownership and operation of the centralized toll free database system should be transferred to a non-government and/or non-carrier entity, and whether the SMS/800 service should continue to be provided under tariff."³ WorldCom is an active participant and contributor on the NANC and the NANC's IMG group that is addressing this issue. Further discussion of this issue is premature until the NANC makes its recommendation to the Commission.

II. The FCC Properly Denied Beehive's Petition for Declaratory Ruling

Beehive alleges that DSMI violated the anti-discrimination provisions of Section 202(A) of the Communications Act when it departed from the terms of the SMS/800 Tariff to request that Beehive, to satisfy the Utah federal district court injunction, complete a form showing its "necessity" for toll free numbers from the 800-629 series. This allegation is nothing more than an attempt to delay the finality of the FCC's decision that Beehive is not entitled to the ten thousand block of 800-629 numbers.⁴ In 1996, when Beehive, the Resp Org, was disconnected

³ Id at para. 28.

⁴ As Beehive should know, the FCC ruling is presently enforceable, and the filing of a petition for reconsideration does not have the effect of vacating, suspending, or staying it. *See*, 47 C.F.R.Sec. 1.429(k) ("Without special order

from the SMS/800 system by DSMI for nonpayment of tariff charges, the numbers then assigned to Beehive were slated to be returned to the portability database for access by all Resp Orgs. DSMI's actions in attempting to return those numbers, which then had no active Responsible Organization associated with them, to the pool of AVAILABLE numbers, was based on both tariff requirements and industry agreements. Beehive has been fighting to retrieve those numbers ever since. Those numbers have been essentially frozen ever since, and are not only not available to Beehive, but they are not available to any other Resp Org either. Beehive is now attempting to bring before the FCC the issue of the proper interpretation of the Utah federal district court's injunction. Beehive's Petition on this matter is procedurally defective.

The FCC's ruling, which expresses the FCC's opinion on the issues referred to it by the federal district court in Utah, must be sent back to that court for a final substantive decision on the matters before it.⁵ The FCC ruling concludes: "IT IS FURTHER ORDERED that the Secretary SHALL SEND a copy of this Order to the United States District Court for the District of Utah, Central Division."

Beehive's Section 202 allegation is really seeking an FCC interpretation of the federal district court's injunction. The Court's Order of January 20, 1999, provided, in pertinent part, that

"all "629" numbers of the 10,000 not currently in use by Beehive or other Rep Orgs are to be placed by DSMI in "unavailable" status pending FCC resolution of the matters referred to it by the district court; provided, however, that Beehive shall be allowed to obtain a

of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with any rule or operate in any manner to stay or postpone its enforcement.") *See also*, 47 C.F.R. Sec. 1.106(n).

⁵ Database Service Management Inc. vs. Beehive Telephone Company, Inc., Civ. No. 2:96-CV-188J (C.D. Utah Jan. 20, 1999).

“629” number from the “unavailable” block **when necessary** to provide service to a new Beehive customer or additional service to an existing Beehive customer.” [emphasis added]

This injunction was not one of the issues included in the Court’s primary jurisdiction referral to the FCC, and the FCC does not have the jurisdiction in the instant proceeding to “reconsider” DSMI’s request from Beehive for a showing of necessity in light of the federal district court’s injunction language. DSMI has a Motion pending before the federal district court in Utah, “Request For Determinations Regarding Necessity” seeking the Court’s guidance on the interpretation of the injunction language. It is up to the Court in the first instance to rule on this Motion.

Moreover, it is obvious from a reading of the injunction language quoted above, that a showing of “necessity” had to be established for DSMI to demonstrate that it was in compliance with the Court order. DSMI’s request that Beehive provide this information on a form can hardly be viewed to be discriminatory, in violation of Section 202 of the Communications Act, since the federal district court, by injunction, imposed a necessity requirement with respect to DSMI’s ability or obligation to release numbers from the 800-629 series, pending the outcome of this proceeding before the Commission. That injunction does not apply to other toll free numbers nor to other Resp Orgs. DSMI’s compliance with that injunction cannot be deemed to be a violation of Section 202.

III. The Majority of Resp Orgs are Satisfied with DSMI

It is very telling that of the more than 250+ Resp Orgs who are the users of the SMS/800 service, only two filed reconsideration petitions challenging the administration of the service. As

reported at recent SNAC meetings, in an independent survey of all the Resp Orgs conducted to obtain feedback on DSMI, the Taylor Group found that the Resp Orgs are extraordinarily pleased with DSMI and all the vendor organizations that support the SMS/800 system, a satisfaction level which is significantly higher than is typically seen in a customer satisfaction survey. WorldCom participated in the survey. When taken as a whole, it appears that WorldCom's primary concern isn't really the day-to-day service provided by DSMI; rather it is the governance structure of the SMS/800 and the absence of end-to-end performance accountability because of the SMS/800 tariff limitations. Yet, WorldCom knows that the performance issues really derive from a variety of factors which are not presently covered in the SMS/800 tariff and are wholly outside the control of DSMI. Replacement of DSMI by a different vendor would have absolutely no impact whatever on the performance issue. The industry collectively, through the SNAC, INC and NANC, are reviewing ways to enhance the performance of the system including whether to recommend that the SCP component of the system be included in the SMS/800 tariff. Again, resolution by the FCC of the entire governance structure issue should await specific input from the industry, and specifically, the recommendation from the NANC.

IV. Conclusion

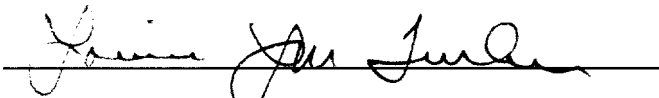
Since the introduction of toll free number portability in the United States in May 1993, DSMI's neutral, fair and expert handling of the day-to-day operation of the SMS/800 has been a driving force in bringing the benefits of competition to the marketplace. DSMI has successfully managed the evolution of the SMS/800 as the number of Responsible Organizations grew from a little over 100 in 1993 to almost 300 today, and the system grew from about 3 million numbers in 1993 to a capacity of over 30 million today. DSMI has supported the industry and the

Commission in managing numerous activities including number exhaust, expansion of the system to include Canadian carriers, and protection of 888 'vanity' numbers, to name a few. On numerous occasions, the industry and the Commission have relied on DSMI's ability and expertise to deal with complex situations in a fair and neutral manner, as a result of which DSMI is viewed as a trusted and respected neutral entity supporting the entire toll free industry.

Based on the foregoing, the FCC should deny the Petitions for Reconsideration.

Respectfully submitted,

DATABASE SERVICE MANAGEMENT, INC.

By: 
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August 14, 2000

CERTIFICATE OF SERVICE

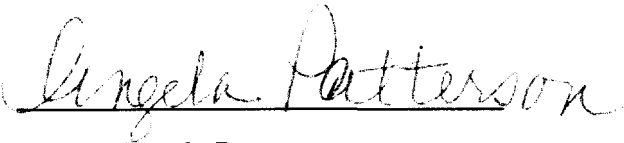
I, Angela Patterson, of Telcordia Technologies, do hereby certify that I have on this 14th day of August, 2000, sent by first class U.S. mail copies of the foregoing "Opposition to Reconsideration Petition" to the following:

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